

1 A. Yes, I remember the
2 amount.

3 Q. And what was the amount?

4 A. 100 million dollars.

5 Q. Do you recall how the
6 parties arrived at that figure?

7 A. Well, like anything else, I
8 mean, there was a negotiation and we
9 ultimately agreed on that number, if
10 that's your question. To my recollection,
11 we asked for more, they offered less, and
12 we ultimately agreed on 100 million.

13 Q. With the information that
14 you provided to Royal prior to the
15 settlement about claims, did you provide
16 information for purposes of arguing that
17 premises coverage applied in excess of the
18 aggregate limits prior to that
19 settlement?

20 MS. ESAYIAN: Objection to
21 form and you can answer if you
22 can.

23 A. I had considered that fact
24 when arriving at the settlement.

1 Q. Was that part of the
2 negotiations with Royal?

3 A. To my recollection, yes.

4 Q. Did you provide information
5 to Royal regarding claims brought by
6 individuals alleging exposure to asbestos
7 in Libby, Montana?

8 A. I don't recall
9 specifically, but I will tell you that at
10 the time what was driving -- what was
11 really driving the big dollars in the
12 settlement was the fact that Grace had
13 gotten a favorable ruling in New York
14 against Royal on the property damage
15 claims and a lot of the dollars that Grace
16 was expending at the time the settlement
17 was done was for the defense of asbestos
18 property damage claims so that was a very
19 large component of the driver behind the
20 dollars that were paid at the time. To
21 the best of my recollection, the personal
22 injury claims were a lot smaller in
23 comparison to the property damage
24 claims.

1 Continental Casualty so you need to define
2 for me which one.

3 Having said that, I can't tell you,
4 sitting here, whether I signed one or both
5 of them or neither of them. I'd have to
6 look at the agreements to see if it's
7 actually my signature on there -- on
8 them.

9 Q. Unfortunately, I have not
10 yet received copies of any of the
11 settlement agreements with any of the
12 insurers through discovery yet so I have
13 not been able to identify them any better
14 than that.

15 Was it your understanding as the
16 representative of Grace that either of
17 those two settlement agreements purported
18 to resolve issues surrounding the
19 policy -- any policy that may have been
20 issued to -- on behalf of BNSF?

21 MS. DeCRISTOFARO: Object
22 to form.

23 A. No, the settlements between
24 Grace and CNA, to my recollection, only

AK's
OBJ:
AFNE

1 involve the policies that CNA had issued
2 directly to Grace.

3 Q. Is it your understanding
4 whether any of the terms of the settlement
5 agreement, either of the two settlement
6 agreements with Continental Casualty
7 Company, included an obligation on the
8 part of Grace to indemnify Continental
9 Casualty Company for any claims BNSF may
10 make under policies issued directly to
11 BNSF?

12 MS. DeCRISTOFARO:

13 Objection to form.

14 MR. HORKOVICH: Objection
15 to form.

16 MS. ESAYIAN: Could you
17 read that question back?

18 (The reporter reads the
19 pending question.)

20 MS. ESAYIAN: Objection to
21 form. It's compound and it's
22 almost unintelligible. You can
23 answer if you can.

24 Q. Do you understand the

1 question? Would you like me to rephrase
2 it?

3 A. No, I understand. Yeah,
4 there was no obligation -- according to my
5 recollection, there was no obligation for
6 Grace to indemnify Continental Casualty
7 for any claims made under policies issued
8 to BNSF. The only obligation relates to
9 policies issued to Grace.

10 Q. Were any of -- let me
11 rephrase that.

12 Are you aware of claims made by
13 BNSF or others under the policies issued
14 by Continental Casualty to Grace for
15 rights as additional assureds or for
16 defense coverages under those policies?

17 MR. HORKOVICH: Objection
18 to form.

19 MS. DeCRISTOFARO:
20 Objection to form.

21 A. Well, I think -- I think
22 BNSF is making claims today. I'm aware
23 that there's an issue. Other than that,
24 I'm not aware of claims.

1 A. The way you phrase that,
2 it's confusing me. I think you said "on
3 behalf of Grace to BNSF".

4 MS. ESAYIAN: Yeah, I'm
5 going to object to the form of the
6 question. You want to try to
7 rephrase it?

8 Q. Is it your understanding
9 that the settlement agreement -- the two
10 settlement agreements between Royal and
11 Grace purported to resolve or in any way
12 deal with any insurance policies that may
13 have been issued by Royal to BNSF and
14 purchased by Grace?

15 MR. HORKOVICH: Objection
16 to form.

17 MR. SCHIAVONI: Objection,
18 no foundation, calls for a legal
19 conclusion and incomplete
20 hypothetical.

21 MR. HORKOVICH: Objection
22 to form.

23 A. The Royal settlement
24 agreement, to my knowledge, you know, only

1 involved policies that were issued by
2 Royal to the Zonolite Company.

3 Q. And Maryland Casualty
4 Company, were you responsible for
5 settlement agreements between Grace and
6 its predecessors, Maryland Casualty
7 Company?

8 A. Well --

9 MR. LONGOSZ: Grace's
10 predecessor -- objection to form.

11 A. I was responsible for
12 Grace. I don't know about the
13 predecessors. I was objecting on behalf
14 of Grace.

15 Q. Have you seen any insurance
16 policies issued by Maryland Casualty
17 Company on behalf of BNSF -- to BNSF that
18 were purchased by Grace?

19 A. Not that I recall, unless
20 something was produced recently.

21 Q. How many settlement
22 agreements were entered into between Grace
23 and Maryland Casualty Company?

24 MS. ESAYIAN: Asbestos or

1 all settlement agreements?

2 MS. CASEY:

3 Asbestos-related.

4 A. I think there were two
5 asbestos-related settlement agreements
6 with Maryland Casualty.

7 Q. Is it your understanding
8 that either one of those two asbestos
9 settlement agreements with Maryland
10 Casualty purported to deal with any
11 policies Maryland Casualty may have issued
12 to BNSF that were purchased by Grace?

13 A. Those settlement
14 agreements, to my knowledge, did not
15 pertain to any policies that may have been
16 issued by Maryland to BNSF.

17 Q. Are you aware whether Grace
18 informed BNSF or otherwise invited BNSF to
19 join into the settlement discussions with
20 any of the three insurers we've been
21 talking about, Maryland Casualty, Royal
22 Indemnity, or Continental Casualty?

23 A. I'm aware that we did not
24 invite BNSF to participate in the

1 settlement discussions.

2 Q. And was BNSF informed of
3 the terms of the settlement before it was
4 entered into?

5 MS. ESAYIAN: Which
6 settlements?

7 MS. CASEY: The
8 settlements with the three
9 insurance companies, Maryland
10 Casualty, Royal Indemnity and
11 Continental Casualty.

12 A. No, they were not.

13 MS. CASEY: I'm not sure if
14 this -- well, I'll just ask the
15 question. You guys object.

16 Q. While negotiating the
17 settlements with any of the insurers upon
18 which Grace has entered into a settlement
19 agreement concerning the asbestos
20 coverage, did BNSF calculate the value, if
21 any, owed to additional assureds?

22 MS. ESAYIAN: You mean
23 Grace?

24 MS. CASEY: I'm sorry.